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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 5[illegible]

6[illegible]

No. [illegible], ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner
ROBERT E. LEE JORDAN.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12, ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

Robert E. Lee Jordan, as amicus curiae, asks leave to file the attached memorandum brief in opposition to the proposed supplemental decree submitted by the Attorney General and filed January 29, 1948, upon the grounds:

(1) That, by the opinion and decree of this Court, those parts of the marginal belt which are described in subsections (a) and (c) of said petition, are fully covered by the opinion and decree of this Court and no additional or supplemental decree is required insofar as the interests of the United States in the marginal belt, as described in said peti-

tion, are concerned. A supplemental decree would be mere surplusage.

(2) That the marginal belt and territory embraced by subsection (b) encloses the bay created by the Attorney General through the simple device of drawing a line upon a map. The extent of this bay is set out in one of the stipulations, which purports, on the sole authority of the Attorney General, to disclaim to California a part of the territory of the United States. The petition asks this Court to confirm the act of the Attorney General in his efforts to dispose of the territory of the United States, by the device employed, and through the stipulation made by him and to legalize his surrender of the rights of the United States in the land and oil of the United States, by judicial decree. The petition of the Attorney General, representing as it does, interests adverse to the United States, should be denied.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner
ROBERT E. LEE JORDAN.

[Copies of the attached petition have been delivered to Counsel for the Government.]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12, ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

MEMORANDUM BRIEF OF ROBERT E. LEE JORDAN, AS AMICUS CURIAE, IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

Leave is asked to file this brief for the reason, among others, that the nation and the people are not being represented in this Court by an Attorney General interested in the protection of the rights of the Government and its citizens, as exemplified by the petition of the Attorney General for a supplemental decree which seeks, upon a fiction created by the Attorney General, to alienate the territory of the United States and dispossess the nation of one of its great natural resources—oil, in the marginal belt off the coast of California.

The first paragraph of the proposed supplemental decree states:

"For the purpose of giving effect to the conclusions of this Court as stated in its opinion announced June 23, 1947, and the decree entered by this Court on October 27, 1947,"

One may well ask in what part of the opinion or decree of this Court, was there any conclusion stated, that the territory of the United States and the oil deposits of the nation should be given away as provided in subsection (b) of the proposed supplemental decree. This covers that part of the marginal belt at Long Beach and San Pedro, California, disclaimed by the stipulation made by the Attorney General and the Secretary of the Interior on July 26, 1947. By what authority can the Attorney General speak for the United States, saying the United States does not claim this or that and make it appear that by his unsupported statement, his words and acts could bind or surrender the rights and interests of the nation? What has the Attorney General submitted to this Court in or as evidence that what he proclaims or has done is either within his power or the law? The law places limitation on words, and the words, in the instant case, seem to be mostly adverse to the interests of the Government.

With respect to subsections (a) and (c), of the proposed supplemental decree, by consulting the opinion of this Court, setting out that California has "no title or interest" in the submerged lands and the oil, it would appear that no further decree is or will be necessary to substantiate the claim of the Government to the marginal belt or the oil along the coast of California, which extends from the low-water mark, out to the three-mile limit. There is, therefore, no purpose in asking a further decree with respect to the segments of the coast which are and have always been "open sea," and the only reason your petitioner can advance for the asking of a supplemental decree for the segments of the marginal belt in the open sea, described in subsections (a) and (c), is that they were put in, in order that

paragraph (b) might be sandwiched in between to hide the real purpose for which the supplemental decree was asked.

As has been pointed out in a previous brief, filed by your petitioner, California has not at any time presented to this Court evidence of the grant to it by Congress of the "inland waters" of that State, nor any evidence that California selected any "inland waters" as a part of the 500,000 acres granted to it by Congress. The elimination of the inland waters from the original complaint filed by the Attorney General is seemingly regarded by him as a legal disclaimer or release of the Government of the inland waters to the defendant State. The fact that the inland waters were excluded by the terms of the litigation does not surrender the rights of the United States to them, unless and until the defendant State has proved they were conveyed to it by Act of Congress. That California does not believe they were so conveyed, is established by the Act of its own Legislature in 1929, Chapter 536, under which the State and its officials were prohibited from granting leases for the drilling of oil in "tidelands, submerged lands, overflow lands, beds of navigable rivers, and lakes." Had California any legitimate claim, this Act would not have been passed by its Legislature. (Amicus Curiae Brief filed September 3, 1947, Page 16.)

The foregoing paragraph refers particularly to subsection (b) of the proposed supplemental decree, which the Attorney General purported, by the stipulation of July 26, 1947, to disclaim to California, upon the theory that by creating a bay out of the open sea, he could dispose of the territory of the United States and the deposits of oil in his pencil-made bay as "inland waters."

A bay, as defined by Black's Law Dictionary "is an arm of the sea surrounded by land except at the entrance." In *United States* v. *Morel*, Fed. Cas. No. 15807, it is defined as "an opening into the land where the water is shut in on all sides except at the entrance." A map of the coast line of California, from Point Firman to Point La Jolla on the

South is hereto attached and marked Exhibit A, clearly demonstrates that the bay created by the Attorney General fails to meet the requirements of the definitions and demonstrates other things as well.

The fact that the great pool of oil is included by the line drawn by the Attorney General in the open sea may account for the creation of the bay, and the attempt by calling it "inland waters", to give the oil to California by the stipulation, the legality of which method, the Attorney General now seems to question, but hopes, by his petition for a supplemental decree, subsection (b), to buttress and make definite, by a decree of this Court.

There is no legal basis for this act of the Attorney General and he is without power or authority to make such an agreement and the stipulation is void and not binding upon the United States.

This Court, in the past, has handed down a number of opinions and decrees with reference to the ownership by various States of the "inland waters" in those States. However, these opinions and the decrees, so holding, in many instances, lack the essential legal basis to confirm a grant of title. No title can be acquired by any State admitted to the Union, under the Constitution, by judicial decree, or upon the basis or claim of State sovereignty, unless the "inland waters" have by specific Act of Congress been conveyed to the State. The State is restricted in its ownership of property, within its boundaries, by the grants of land made it by the Congress. Nothing passes by implication (*MacDonald* v. *U. S.*, 119 Fed. (2) 821, 825) all opinions and decrees to the contrary notwithstanding. The failure of the Attorney General to include "inland waters" in the instant litigation does not, by its omission, transfer the "inland waters", not so granted, to defendant State.

This Court, in the case of *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100 at 122, states:

> "It is now settled in the United States and recognized elsewhere, that the territory subject to its juris-

> diction include the land areas under its dominion and control, and ports, harbors, bays, and other enclosed arms of the sea along its coast to a marginal belt of the sea extending from the coast line oceanward a marine league, or three geographical miles."

The following statement is made on page 10 of the memorandum supporting the petition for a supplemental decree:

> "The United States has not surrendered, waived, or attempted to contract away any part of the areas or rights therein, under which it has dominion and paramount power under the decree of this Court, entered October 27, 1947, and nothing herein is intended to have any such effect."

The foregoing declaration, in the light of the stipulations made by the Attorney General with the State of California on July 26, 1947, and after the opinion of this Court was handed down on June 23, 1947, and subsection (b) in the proposed supplemental decree, is directly contrary to the facts and that declaration. In order to make this declaration true and in accord with the facts, it would have been and will be necessary for the Attorney General to notify this Court of the cancellation of the stipulations disclaiming San Pedro Bay and the elimination of subsection (b) from the proposed decree. But, this has not been done and notwithstanding the declaration above quoted, the Attorney General persists in his efforts on behalf of the State of California. Counsel for the Government, also, in his memorandum, on page 10, requests that California be called upon to answer this petition for a supplemental decree. "Why this request?", when this Court, has ruled that California has no interest in the territory or the oil. This request of the Attorney General must raise some questions, if not suspicions, in the minds of all as to what is afoot. Surely, this request is not in the interest of furthering the conclusions of this Court, but is further evidence of the adverse efforts of the Attorney General to do all he can, not

in the interests of the Government, but for the State of California.

During all the arguments before the Court and in the pleadings filed, the interests of California seemed to have weighed more heavily upon the mind of Counsel for the Government and the subject of greater concern, than the rights of the Government. Government Counsel has at all times sought to further and protect the interests of California, as for example the stipulation, heretofore referred to, by disclaiming the rights to the Government in territory and oil, held by this Court, to belong to the Government and subsection (b) of the proposed decree. The Attorney General has not yet disclosed to this Court the secret of his authority or power to disclaim the territory of the United States and its interest in the oil. He claims, according to newspaper reports, that he is a State's rights man. Is he by reason of this statement justified as the Attorney General to exert his efforts in favor of the claims of the State of California as against the rights of the Nation? Could it be the Attorney General is miscast in the role of defender of the Constitution and the rights of the people?

Your petitioner wonders if subsection (b) was placed between (a) and (c) in the hopes that the disclaiming of the interests of the United States, in the Attorney General's Bay of San Pedro, might pass unnoticed and that he might thus cause the Court, by oversight, to ratify and confirm his unlawful stipulation of July 26, 1947 (a copy of which is on file in this Court) by approving the proposed decree. The detailed arguments against the legality of the stipulations are set out in petitioner's brief, filed with this Court September 3, 1947, and will not be again set forth.

It would appear that it is the purpose of the Attorney General to select various and sundry segments of the coast line which he will submit to the Court for the purpose of securing supplemental decrees. It is respectfully sug-

gested that in view of the Court's decision regarding the rights of the Government in the marginal belt that a general and comprehensive delimitation based upon Government surveys might solve the question regarding the delimitation of the marginal belt and establish the boundary line between the three-mile marginal belt and the ordinary low-water mark. It is respectfully suggested that the following might be a solution:

For the purpose of demarcation of the boundary line between the three-mile marginal belt and the ordinary low-water mark on the coast of California, the boundary is established in conformity with the official maps and charts prepared by the United States' Surveyor General, together with the field notes thereof, during the years 1857 and continuing to and including the year 1874, as said maps, charts and field notes, appear in the records and Archives of the United States. (A copy of said map is hereto attached and marked Exhibit B.)

Your petitioner believes that the boundary line established by the Surveyor General of the United States, would be conclusive, and would obviate the necessity of any further petitions being filed to establish boundary lines.

Pursuant to the decree of October 27, 1947 with respect to the stipulations, your petitioner filed on February 6, 1948, in the United States District Court for the District of Columbia, a petition, asking that Court to set aside the stipulations as being beyond the scope of the powers and authority of the Attorney General and Secretary of the Interior to make, contrary to law, public policy and the opinion of this Honorable Court.

It is believed, from the standpoint of the facts and the law, the opinion and decree of this Court in the instant case, that the petition of the Attorney General for a supplemental decree, covering two segments of open sea and the

disclaimer to San Pedro Bay, is adverse to the interests of the United States, and should be denied.

Respectfully submitted,

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for
ROBERT E. LEE JORDAN,
815 15th Street N. W.
Washington 5, D. C.

February, 1948.

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UNITED STATES - WEST COAST

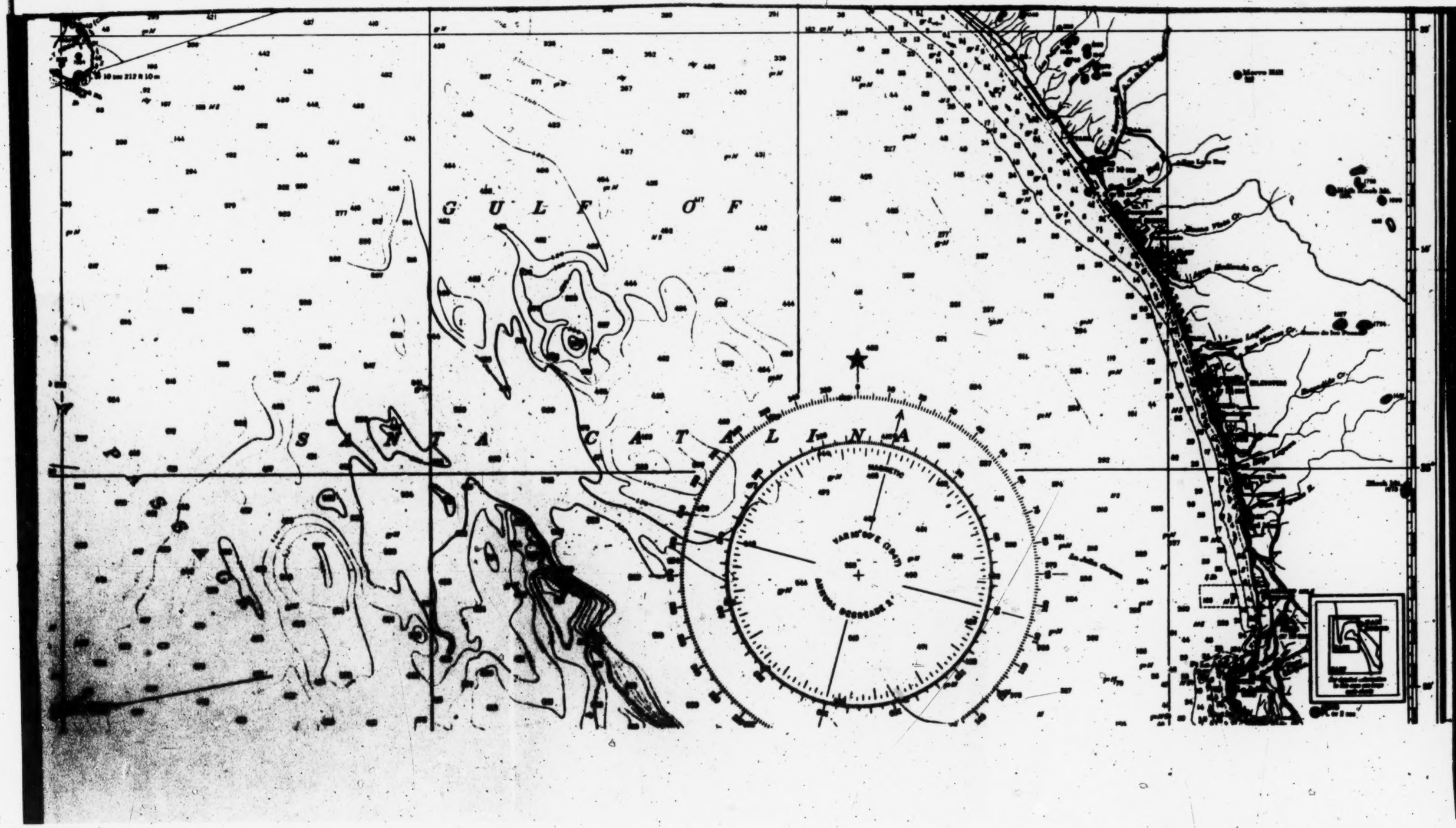
CALIFORNIA

SAN DIEGO TO SANTA ROSA ISLAND

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

LOS ANGELES

SAN PEDRO BAY


G U L F O F
S P A I N
C A T A L I N A

Rec'd with San Pedro letter of May 14 1869 Petitioners Exhibit No 2.

2 ff

Fractional Township N° V. South, Range N° XIII West San Bernardino Meridian

Part of Rancho San Pedro — Part of Rancho Los Carritos — Part of Rancho Los Alamitos

Lot N° 37 — Lot N° 38 — Lot N° 39 — Lot N° 40

Outer Bay of San Pedro — Inner Bay of San Pedro — Terminal Island — Los Angeles River — San Gabriel River

Part of Rancho Los Palos Verdes

OCEAN

PACIFIC

Sec 19

Bearings of the lines of Terminal Island Reduced.					
No	Courses	Distance	No	Courses	Distance
Beginning at the N.E. corner			5	N 89½° E	1.00
along the line of mean low water			6	S 0° 30' E	1.00
and ending at the S.E. corner			7	N 89° E	0.50
1	S 0° 15' W	0.50	8	N 0° 30' W	1.00
2	S 2° W	0.50	9	N 89½° E	0.50
3	S 27½° E	1.00	10	N 75° W	1.50
4	N 62° E	2.00	11	N 89½° W	0.75
		3.50			5.25
					3.50
				Aggregate	19.50 Chains

Aggregate Area of Public land 2.00 Acres
Estimated Area of Private Grants and Inner Bay of San Pedro 4,100.00 "
Aggregate 4,102.00 "

Magnetic Variation 16° 15' East.

The above Plat of Fractional Township N° 5 South, Range N° 13 West of the San Bernardino Meridian is strictly conformable to the field notes of the Surveys thereof on file in this Office and is hereby approved and approved
Surveyor General's Office
San Francisco, California
September 25th 1867.

Thomas Day
Surv. Gen. Cal.

Ranges Designated	By Whom Surveyed	Date of Contract	Amount of Surveys	When Surveyed
Fractional Township N° 5 South Range N° 13 West	Henry Hancock	January 25th 1866		1866
Exterior of Township	" "	February 16th 1867		1867
Subdivision of Sections and Meanders	" "	Instructions Received 1867		1867
" " " Northern Boundary	" "	" September 1867		1867
" " " Western "	" "	" September 1867		1867
" " " Eastern "	" "	" September 1867		1867
Mean High Water Line	G. H. Thompson	" September 1867	18 Miles 77 Chains	1867
	" " "	" " "	3 " 10 " 00 "	September 25th 1867